RAJESH KUMAR SONTEKE
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A.A.R. (B)

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: Hon'ble Shri Fakhruddin, J
& Hon'ble Shri V.K. Shrivastava, J.

CRIMINAL APPEAL NO.305/1993

Chandrika Prasad

Vs

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge

Hon'ble Shri Justice Fakhruddin

Sd/-
Fakhruddin
Judge

21/09/2005

Sd/-
JUDGE
21/09/2005

(19)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: *Hon'ble Shri Fakhruddin, J &*
Hon'ble Shri Vijay Kumar Shrivastava, J.

CRIMINAL APPEAL No. 305/93

Appellant — **Chandrika Prasad, s/o. Mangal Ram, aged about 30 years, r/o. village Julum, Thana Abhanpur, Dist. Raipur (CG).**

Vs

Respondent — **State of Chhattisgarh Through PS Abhanpur, Dist. Raipur (CG)**

PRESENT

Mr. Sunil Sahu, Counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

JUDGMENT

(Delivered on 22/09/2005)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence dated 11/03/1993 passed by the IInd Additional Sessions Judge, Raipur , in Sessions Trial No. 158/91 by which the appellant has been held guilty for committing offence of murder punishable under Section 302 of the I.P.C., and has been sentenced to undergo imprisonment for life.

2) Brief facts of the case are that the appellant and the deceased were drivers. Both were doing the work of ploughing and

leveling the field of Kamal Ram by Tractor No. CIS 19098 and CIS 19233. On 09/03/1991 after completion of their work in the forenoon they took their lunch and thereafter all of a sudden a quarrel erupted between them in connection with payment of money and that quarrel resulted in murder of deceased D.S. Naik by the appellant, who wielded injury on D.S. Naik with a spade which is an agricultural equipment. The injury was inflicted on the temple region of D.S. Naik who instantly succumbed to injury on the spot.

3) Kamal Ram lodged report in the Police Station. Police recorded the merg and first information report and investigated the case. Investigating Officer S.R. Yuwane prepared panch nama of dead body and forwarded the same for autopsy to the medical officer. From the spot, spade used by the appellant for wielding injury on D.S. Naik was seized by the Investigating Officer who also forwarded the same to the medical officer for his opinion. Dr. Harved Nirelvar conducted autopsy and also examined the spade. Medical Officer was of the opinion that the death of D.S. Naik was as a result of coma due to head injury and the injury found on the head of the deceased could have been caused by the seized spade.

4) During investigation witnesses were examined under Section 161 of the Cr.P.C. Map was prepared. Recovered spade, plain earth, blood stains and clothes of deceased were sent to FSL. On examination, chemical examiner found the articles except the plain earth to be blood stained. After due investigation final

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report was led in the Court of Judicial Magistrate First Class, Raipur, who committed the case to the Court of Sessions for trial.

5) Charge under Section 302 of the I.P.C., was framed against the appellant. Charge was read over and explained to him, who abjured his guilt and claimed himself innocent.

6) Learned trial Court relied on the evidence of extra judicial confession duly supported by other circumstances held the appellant guilty for committing murder of deceased D.S. Naik and accordingly convicted the appellant under Section 302 of the I.P.C. and sentenced as aforementioned.

7) Both the parties are heard and record of trial Court perused.

8) From the statement of Doctor Harved Nirelwar (PW/1) who conducted autopsy on 10/03/1991 and post mortem report i.e., Ex.P/1, it has been established that deceased D.S. Naik received ante mortem, stab wound over head by the left side of left eye 2 ½ x 1 ½ cm., directed medially, slightly upwards entering in the brain substance causing fracture of underlying skull bone and lacerated wound of underlying brain substance, and deceased died as a result of that injury which was caused by heavy sharp pointed weapon. Dr. Harved Nirelwar (PW/1) also examined the spade and opined that the injury caused to the deceased could have been caused by this weapon. It was proved

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that D.S. Naik died homicidal death as a result of injury caused to him on his head by heavy sharp pointed weapon.

9) Learned trial Court relying on the following circumstances held the appellant guilty for committing the offence of murder.

a) *On the date of incident in the forenoon some hot talks took place between appellant and deceased*
b) *On hearing the alarm raised by Jugo Bai witness Hariram and Amarsingh rushed to the spot where they saw the appellant and dead body of D.S.Naik.*
c) *Extra judicial confession .*

10) To prove guilt on a case based on circumstantial evidence, it is necessary to prove each of the circumstances and to draw conclusion of guilt, the circumstances must be conclusive in nature and must be consistent with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. So far as extra judicial confession is concerned, if clear cogent confession has been made in the normal course without any pressure, it can be relied on and conviction can be recorded.

11) Gajanand (PW/17) in his statement deposed that he along with the deceased and the appellant took their meals in forenoon. When they were taking meals a quarrel erupted between

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appellant and deceased with regard to some repayment of amount. At that time on his intervention that quarrel was ended. Thereafter, he left the place. Neither he has any interest with the appellant or deceased nor he has any inimical terms with both the parties. Even in his cross examination nothing is there to show his statement unreliable.

12) Lakhanlal Sonkar (PW/11) in his statement has deposed that when he was in his field, he heard noise that ***"Mardiya"*** so he rushed to the spot and saw D.S Naik, who was lying dead having pierced spade inside his head. Appellant was there who was saying ***"Mardiya Salako"*** Chintaram told him that Chandrika Prasad by wielding injury with spade killed driver Naik. Taking into consideration the omission in his statement made before the Police which is Ex.D/1, it cannot be believed beyond doubt that appellant on the spot was saying "Mardiya Salako" but so far other part of his evidence is concerned, that is credible.

13) Amar Singh (PW/12) in his statement has deposed that the wife of Gajanand raised a noise ***"Mardaris roga"*** and on hearing the noise, he reached the spot and saw that D.S. Naik is dead and appellant is standing nearby the dead body. In cross examination the defence confronted him with his statement (Ex.D/2) recorded by the Police at portion A to A. From reading the said portion, it appears that whatever the witness has narrated in the Court is virtually the same what is recorded in that portion. Only the way of narration is different.

14) Taking together the statement of Lakhanlal (PW/11), and Amarsingh (PW/12), it was established that the wife of Gajanand i.e., Jugo Bai raised noise ***"Mardaris"*** and on hearing that noise witnesses rushed to the spot and saw the dead body of D.S. Naik having injury on his head and the appellant was standing nearby the dead body.

15) Chintaram (PW/13) and Kashlal (PW/14) have been examined by the prosecution to prove the extra judicial confession made by the appellant. Chintaram in his statement has deposed that he accompanying Lakhanlal came to the spot, he saw D.S. Naik lying dead and appellant was standing nearby the dead body with a spade. He enquired from the appellant, who confessed that he has killed D.S. Naik. Kashlal (PW/14) in his statement deposed that he came to the spot and saw D.S.Naik was lying dead and appellant was sitting there. He enquired with the appellant who confessed that he has killed D.S. Naik. On further enquiry he also admitted that due to dispute regarding payment, he killed him.

16) Both the witnesses (PW (13) & (14)) have no enmity with appellant. They are independent witnesses and soon after the incident, they reached the spot and found the appellant with spade standing nearby dead body and in natural course they enquired with the appellant and in natural way appellant gave details of the incident confessing his guilt.

17) Kamalram (PW/5) is the person who engaged appellant and deceased for leveling his field. He received information at about 3.00 p.m. and after arriving at his field, he tied the appellant with rope and thereafter went to Police Station and lodged first information report (Ex.P/6) which has also been proved by the witness S.R. Yuwane (PW/18) Kamalram in his report (Ex.P/6) has reported that driver Chandrika Prasad inflicted injuries by an iron spade on the head of deceased D.S. Naik who succumbed to those injuries.

18) From the aforesaid proved circumstances, it is established that on the date of incident appellant and deceased were ploughing and leveling the field of Kamalram. During lunch time when they were taking meals a quarrel took place regarding payment of money between them, but at that time the quarrel was ended on intervention. After some time, Jugo Bai raised a noise and on hearing her noise witnesses rushed to the spot and saw D.S Naik who was dead who had injury on the head on his temple region and appellant was standing there by the said of dead body with spade. On enquiry appellant confessed that he has killed D.S, Naik. The medical officer gave opinion that injury found on the body of the deceased D.S. Naik could have been caused by the spade.

19) In the result, we are of the opinion that learned trial Court evaluating the evidence properly and correctly held the appellant guilty for committing the offence of murder of D.S. Naik and also rightly sentenced the appellant. No interference in the

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judgment of conviction and order of sentence passed by the trial Court is called for, therefore, the impugned judgment of conviction and order of sentence passed by the trial Court are maintained and the appeal is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

22/09/2005

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